



FACTUAL FINDINGS

1. If appellants used the 2020 tax year to determine the amount of their estimated tax payments, their estimated tax payments should have totaled \$44,667 (90 percent of their total tax due, as stated below) and their payments should have been 70 percent of the total (\$31,267, rounded) on July 15, 2020,<sup>2</sup> no payment on September 15, 2020, and the remaining 30 percent (\$13,400) on January 15, 2021. (R&TC, § 19136.1; Internal Revenue Code (IRC), § 6654(d).)
2. Appellants made estimated tax payments toward their 2020 tax liability on July 15, 2020 (\$9,045), September 15, 2020 (\$2,000), and January 15, 2021 (\$12,000), for total estimated tax payments of \$23,045, or \$21,622 less than required if appellants based their payments on the tax due for 2020.
3. Appellants made an extension payment of \$1,500 on April 15, 2021. Their tax payments totaled \$24,545 on that date.
4. On May 15, 2021, two calendar days before taxes were to have been paid in full,<sup>3</sup> appellants' financial advisor recommended to appellants that they make a \$20,000 payment to respondent and a much larger payment to the IRS.
5. On May 16, 2021, appellants used the IRS online payment system to authorize a May 17, 2021 payment. On that same date, appellants used respondent's Web Pay system in an attempt to authorize a \$20,000 payment to respondent. The request to the IRS was successful. The request to respondent was not successful.
6. A screen print of the confirmation page that respondent's Web Pay system displayed after appellants entered information to authorize the requested payment (e.g., amount, date, bank routing number, and bank account number) shows that appellants attempted to schedule a \$20,000 extension payment to be made on May 17, 2021, from a Wells Fargo Bank account. The page, which shows the bank routing number and the last four digits of an account number, states, "Allow up to 2 business days from the payment date for your bank account to reflect your payment. To confirm your payment has been cleared, review your bank account statement or contact your bank."

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<sup>2</sup> Respondent postponed the April 15, 2020, and June 15, 2020, payment due dates to July 15, 2020, due to COVID.

<sup>3</sup> Respondent postponed return and final payment due dates from April 15, 2021, to May 17, 2021.

7. Respondent’s Web Pay system also generated an email confirmation of the attempted payment and sent that email to appellants at their request. The email includes the following statement: “If you have insufficient funds, the banking information is incorrect, or your account is closed, your financial institution may reject your request.”
8. Appellants’ bank account statement for parts of May and June 2021 shows a May 17, 2021 payment to the IRS. Just two entries below that entry is an entry showing a \$20,000 online transfer six days earlier on May 11, 2021, to an account belonging to appellant-husband. The portion of the bank statement provided by appellant does not show any payment to respondent.
9. Appellants timely filed their 2020 California Resident Income Tax Return (Form 540) on October 15, 2021, reporting, as relevant here, \$44,545 in estimated tax payments, a tax due of \$5,084, interest and late payment penalties of \$448, and an estimated tax penalty of \$375.<sup>4</sup> Appellant remitted the reported balance due of \$5,908.
10. On February 3, 2022, respondent issued to appellants a Notice of Tax Return Change - Revised Balance (Notice), which informed appellants that respondent’s records show estimated tax payments of \$24,545, not the reported \$44,545, and that as a result of the difference, there was a revised balance due, which included a late-payment penalty of \$2,264.92 and the reported estimated tax penalty of \$375.
11. Appellants paid the revised balance due and filed their timely claim for refund.
12. Respondent denied the claim for refund. This timely appeal followed.

### DISCUSSION

#### Issue 1: Should the late-payment penalty be abated?

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Absent extraordinary circumstances, such as respondent’s postponement of the due date, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) For the 2020 tax year, the filing and payment due date was

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<sup>4</sup> The evidence does not show how appellants calculated the reported estimated tax penalty. The Form 540 indicates that FTB Form 5805 was attached. The Form 5805 might have provided useful information regarding how appellant calculated the penalty, but neither party provided a copy of that document or explained the calculation of the reported penalties.

postponed to May 17, 2021 due to COVID. While appellants attempted to remit payment by that date, their attempt was unsuccessful, and they did not actually remit payment in full until March 24, 2022.<sup>5</sup>

When respondent imposes a penalty, it is presumed to have been imposed correctly.<sup>6</sup> (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Xie*, 2018-OTA-076P.) A late-payment penalty may be abated if the taxpayer shows that the failure to make a timely payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish entitlement to abatement, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence and that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Rougeau*, 2021-OTA-335P.) The law requires proof by a preponderance of the evidence (Cal. Code Regs., tit. 18, § 30219(c)), which means the taxpayer must establish by documentation or other evidence that the circumstances it asserts are, more likely than not, true. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

Proof that a taxpayer's late payment was due to his or her failure to properly complete an authorization to allow respondent to obtain prompt payment directly from the taxpayer's bank or credit card issuer is not proof of either reasonable cause or an absence of willful neglect. (*Appeal of Friedman*, 2018-OTA-077P.) To conclude otherwise would, in effect, improperly shift to respondent the risk of an erroneous entry by a taxpayer. Furthermore, use of respondent's Web Pay system carries with it the responsibility to ensure that the payment was timely completed. (*Ibid.*) That responsibility is fulfilled by monitoring one's bank or credit card account with sufficient attention to detail to promptly determine whether the payment was timely made.

Respondent states that appellants incorrectly input their bank account number when they attempted to schedule the May 17, 2021 extension payment, which caused the rejection of the payment. It argues that the evidence does not establish that this error or appellants' failure to recognize and correct this error was due to reasonable cause and not to willful neglect.

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<sup>5</sup> Appellants remitted the bulk of the amount due on February 14, 2022, and they remitted the final \$19.29 of the amount due on March 24, 2022.

<sup>6</sup> Here, appellants do not dispute that their payment was late or that respondent correctly calculated and imposed the penalty.

Appellants argue that they acted like ordinarily intelligent and prudent businesspersons when, on the day before the payment due date, they attempted to authorize the extension payment on the due date. Appellants assert that they believed at the time that they had correctly entered all required information, and that they reasonably relied on the confirmations provided by respondent. They state that they followed respondent's advice to check their bank statement to confirm that the payment request had been honored by their bank, and they argue that they reasonably believed that the \$20,000 entry on their bank statement, just two entries below the one confirming the payment to the IRS, showed the payment to respondent. They claim that they did not realize their error until they investigated further after receiving the Notice from respondent. In essence, appellants contend that to demand more of them than this is tantamount to applying a standard of extraordinary intelligence, care, and prudence for which there is no support in the law.

There is insufficient evidence to allow OTA to make a finding regarding exactly what caused respondent's Web Pay system to reject appellants' payment. However, it is not respondent's burden to show why the Web Pay system rejected appellants' request. It is appellants' burden to establish a basis for relief. They have not done that. OTA finds that appellants' failed attempt to make the extension payment was due to appellants' entry error and that this error would not have occurred if the person who entered the information had exercised ordinary business care and prudence.

OTA also rejects appellants' argument that they exercised ordinary business care and prudence to confirm the payment had been made. Appellant-husband testified that a few days after he tried to authorize the payment – that would have been a day or more after the full payment was due – he briefly looked at his bank account to see if there was a \$20,000 debit. It is undisputed that there was no payment to respondent shown on appellants' bank statement. The question is whether appellant-husband did what the law required of him: that he exercised ordinary care and prudence to monitor the bank account to confirm that the electronic payment request had been timely and correctly processed. (*Appeal of Scanlon*, 2018-OTA-075P.) OTA finds that a person exercising ordinary business care and prudence would not have believed that a \$20,000 transfer to one of appellant-husband's other accounts was confirmation that the payment had been made to respondent six days later. On the basis of the foregoing, OTA finds

that appellants have failed to show that the late payment was due to reasonable cause and not due to willful neglect.

Issue 2: Should the estimated tax penalty be abated?

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated as and often referred to as a penalty, where taxpayers fail to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 conforms to IRC section 6654 but modifies the due dates and amounts for payment of estimated taxes. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the interest rate to the underpaid estimated tax. (See IRC, § 6654(a) [calculating estimated tax penalty by reference to the interest rate, established under IRC section 6621, imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modifications, conforms to the federal interest provisions in IRC section 6621]; *Appeal of Johnson*, 2018-OTA-119P.) Unlike the late-payment penalty, relief from the estimated tax penalty is not available on reasonable cause grounds.<sup>7</sup> (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants rely entirely on the same reasonable cause arguments here, in support of their request for abatement of the estimated tax penalty, that they made in support of their request for abatement of the late payment penalty. As stated above, there is no reasonable cause ground to abate an estimated tax penalty. Consequently, OTA finds there is no basis for abating the penalty.

Although the above finding is dispositive, OTA notes that appellants' reasonable cause argument is based entirely on their failed attempt to authorize the payment that was to occur on May 17, 2021. Appellants state that they were not aware of the rejected payment request until they received respondent's Notice in February 2022, months after appellants filed their income tax return. They would not have considered the rejected payment request when calculating the \$375 estimated tax penalty reported on October 15, 2021. It also seems likely that the estimated tax penalty would have been more if respondent had chosen to recalculate it.

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<sup>7</sup> There are certain limited circumstances under which the estimated tax penalty will not apply. It will not apply to the extent that, by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience. It also will not apply when the taxpayer retired after attaining the age of 62, or became disabled, during either the tax year under consideration or the immediately preceding tax year and the taxpayer establishes that the failure to timely pay the estimated tax payment was due to reasonable cause and not to willful neglect. (IRC, § 6654(e)(3).) Neither the arguments nor the evidence warrant consideration of these exceptions.

HOLDINGS

1. The late-payment penalty should not be abated.
2. The estimated tax penalty should not be abated.

DISPOSITION

Respondent's action denying the claim for refund is sustained.

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Michael F. Geary  
Administrative Law Judge

Date Issued: 9/18/2023